



**UNITED STATES DEPARTMENT OF COMMERCE
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PD

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/057,016	04/07/98	TURPEN	

HM32/0714

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EXAMINER

ART. UNIT PAPER NUMBER

DATE MAILED:

07/14/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Art Unit: 1649

All claims are allowable. However, due to a potential interference, *ex parte* prosecution is SUSPENDED FOR A PERIOD OF SIX (6) MONTHS from the date of this letter. Upon expiration of the period of suspension, applicant should make an inquiry as to the status of the application.

The following comments are provided in response to the personal interview of 3 June 1999 and formal Response of 3 June 1999.

Applicants urge that claim 17 should be afforded an effective filing date of 17 February 1989, the filing date of parent application Serial No. 07/310,881, given the teachings by Holt et al of the manipulation of viral vectors by manipulating the readthrough sequence, the enablement of a leaky stop codon in the '881 application as evidenced by pages 20 and 33-35 of that application, and the improper interpretation of the patented claim by the Examiner which is prohibited per excerpted portions of the MPEP. Applicants further urge that the Examiner utilized the wrong filing date when considering the effective filing date of the patent, so that the instant application is in fact the senior party.

Upon review, and as discussed at the interview of 3 June 1999, the Examiner concedes that he was in error in determining the filing date of the Hamamoto et al patent filed under 35 USC 371. The correct filing date, for prior art purposes, of the Hamamoto et al patent is the U.S. filing date, i.e. 30 November 1994. Hence, the instant application is the senior party, even if it were given the effective filing date of 14 October 1994. The error is regretted.

Art Unit: 1649

Furthermore, upon review of pages 8 and 27 of application Serial No. 07/310,881, wherein said pages were not provided by Applicants during the interview of 3 June 1999, the Examiner has now considered that Application Serial No. 07/310,881 did in fact enable claim 17 drawn to a viral particle comprising a viral coat protein enclosing a fusion protein comprising a viral coat protein and a heterologous peptide. Page 8 refers to a chimeric sequence (lines 10-12), and page 27 states that the chimeric nucleotide sequence could encompass a fusion protein-encoding sequence (lines 10-12). Pages 33-35 previously submitted by Applicants state that the chimeric nucleotide sequence could be packaged within a native viral coat protein via *in vitro* packaging which would occur following the expression of the native viral coat protein gene in a different vector within the same cell (page 33, lines 13-24; page 34, lines 3-17). Thus, instant claim 17 is enabled by the '881 application and so is afforded the effective filing date of that application, i.e. 17 February 1989. Application Serial No. 07/310,881 was previously unavailable for review, and was only recently forwarded to the Examiner. The delay is regretted.

The '881 application does not provide support for the obtention of such a viral particle via the use of a leaky stop codon or readthrough sequence, the method utilized by Hamamoto et al, contrary to Applicants' assertions. Page 20 of the '881 application supplied by Applicants merely refers to leaky stop codons in the native virus, as part of the background information, and is completely silent with regard to any manipulation thereof in a viral vector. Furthermore, Holt et al submitted by Applicants was published in 1990, after the effective filing date of the '881 application. See In re Glass, 181 USPQ 31, 34 (CCPA 1974), which teaches that references

Art Unit: 1649

published after the filing date of an application may not be relied upon for the enablement of the specification. However, the instant application provides an alternative means for obtaining the viral particle of claim 17, as stated above.

Applicants' arguments regarding the Examiner's improper interpretation of the patented claim, which was copied by Applicants for the purpose of provoking an interference, are deemed moot in view of the discussion above.

The remaining parent applications are being forwarded to the Examiner. Upon receipt of all of the parent applications, the instant application, the patent file, and all parent applications will be forwarded to the appropriate official for review.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is (703) 308-0280. The examiner can normally be reached on Monday through Friday from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

July 12, 1999

DAVID T. FOX
PRIMARY EXAMINER
GROUP ~~180~~ 1649

